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WE PAY WITH DEATH*

PALMER HOYT

*A Speech Delivered by Mr. Hoyt, Editor and Publisher, The Denver Post,
at the 75th Annual Convention of the American Bar Association
at Boston, Massachusetts, August 25, 1953*

Mr. Chairman, members of the American Bar Association,
Ladies and Gentlemen:

I am here today to speak to you on the general subject of public interest in traffic laws, traffic courts and the need for co-operation between the press, the bar and the public in facing the problem that traffic connotes.

May I say at the start that I am greatly impressed with what the American Bar Association is doing relative to our traffic courts and our traffic problems. But as I researched the whole question, I was even more impressed with the great need for further effort, not only by the bar association, but by the press as well, and of course the public.

As I read your scholarly theses on traffic, I began to realize that the traffic court is much more important than laymen realize, even laymen in the newspaper business had believed. It is important because for a tremendous segment of our population, the only contact they will ever have with the processes of the law is through a traffic court.

The whole problem is highlighted by the increase in cars and drivers. The grisly totals of dead and maimed mount and assume new importance as our country grows, our population increases, our highways extend and our manufacturers make more and more automobiles.

The toll in blood and property paid by human kind in this age of 70 million drivers fascinates me. Thirty-eight thousand dead in 1952, 1,350,000 injured, property damage at \$3.5 billion! Seventy million men and women behind the wheels of 55 million automobiles. In 1951 out of 1695 cities representing a population of 54,424,000 people, there were 15,396,081 motor vehicle violations. And of that number, five million were known as "moving violations." It has been estimated that the total of traffic court defendants in a single year now exceeds 20,000,000 by far.

Where will it all end?

Children aren't yet being born with wheels attached ready to roll on our highways but it is almost as though the forces of evolution were at work in attaching such mechanical devices to our children, because at the age of sixteen in most states they become involved in a set of wheels and thereafter are virtually helpless without them.

With the mounting rate of automobile accidents, fatal and otherwise, which are forming a grave threat to our economy and to our civilization, I have been wondering at what point the laws of evolution and the laws of survival will cross.

To illustrate, when I was a little boy in Vermont, we had a horse named Billie. Billie was of Morgan stock and was reputed to have done a mile on the ice in three minutes. In any event, he was a rugged animal and a rugged individualist. Of all things living or dead, he hated most the automobile. There were a few of them around in 1907-08 in the quiet little village of Derby, Vermont. Every time Billie saw an automobile, he ran away. He wrecked several buggies. Only the family's love for this precocious horse prevented my father from selling him or trading him off.

Yes, Billie ran off many times, and as I say, the sight of an automobile drove him to absolute frenzy.

As the years rolled by I have had occasion to witness other horses and their attitude toward automobiles. For example, I was going up to the Rountt National Forest not so long ago, our sedan closely following a pickup truck that was traveling down the country road. The road itself meandered from one side of its 60-foot right of way to the other, and at several points passed close to the fence. Suddenly, we came up and passed three horses dozing in the morning sun, their heads nodding over the barbed wire. From the car window, I could have flicked them on the noses, so close were they. Yet not a one of these horses cocked an ear or opened an eye.

Apparently in the evolutionary processes, the horses who were frightened of automobiles had eliminated themselves.

In this regard, I have been asking different people what became of the kind of chickens that used to cross the country roads only to be killed in the process. Today, you can find many a chicken peacefully eating on his own side of the road and making no effort to seek the other side at the risk of his neck.

Will it be so with the human race? Will the people who cause accidents, who drive recklessly, will they and their kind be eliminated as the Frankenstein of the automobile traffic reaches new and terrifying proportions in this the Atomic age?

In this advancing era of dangerous mechanisms, will the smashed fender become as common as a scuffed shoe? And will the carburetor replace the human heart? I don't know, but I do know that if anybody is kidding about two cars in the garage, he has got another think coming. This is becoming the machine age in fact, and anyone who can hold a social security card is at least a potential applicant for a driver's license.

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When I accepted the assignment of addressing this section of the American Bar Association on the general subject of "Public Interest in Traffic Laws and Traffic Courts," I thought perhaps I could tell you something about the laws and courts that you didn't know. Or to put it another way: I thought I could emphasize the need for reform and improvement, in terms of the crushing problem under which the public generally is laboring.

I find that the A.B.A. has had special committees working on

"high standards" for traffic courts, cooperating with the national safety council, state and local bar associations and the conference of chief justices of state supreme courts.

The best material on this subject that ever crossed my desk is the work of James P. Economos of Chicago, Director of the traffic court program of the American Bar Association since 1943.

* * * * *

Let me throw out a handful of topics generally related to traffic laws and courts, and then pick several of them up for hurried and personalized application: procedures for arrest in traffic law violations; the conduct of traffic court; the quality and qualifications of judges and justices of the peace; the principles of progressive fines and sentences; the uniformity of codes and arrest processes; the licensing and inspection of drivers and vehicles; the engineering and economics of urban, intrastate and interstate streets and highways. There are others, but the foregoing will do for now.

There is not one of the subsections in the general traffic problem which we individually cannot do something about if we will. How many of us, for example, are contributing to the delinquency of our constitutional system by condoning kangaroo courts of first impression—courts which you know are regularly violating the simple and fundamental rights of citizens—your clients and others?

There are police courts, municipal courts, traffic courts and justice of peace courts which today are

1. Exceeding their statutory jurisdiction in imposing fines and sentences.
2. Willfully and arbitrarily ignoring the doctrine of contributory negligence.
3. Suspending abnormally heavy fines as a condition of restitution in personal property damage cases.
4. Holding defendants improperly and too long in custody pending the collection of information on damages and insurance.
5. Abusing or ignoring basic rights of defendants—the right to counsel, to trial by jury, to enter a plea. There are courts in which racial identity, competence of individual expression or economic status of defendants befoul justice—just as surely as pecuniary bribery.

Are members of the American Bar Association, as professional men and citizens, as zealous and persistent in their demand for a high order of justice of the land? Let me tell you a stirring story—a true life story—of effective citizenship by the lawyers of a small western community.

The newspaper of a city in central Washington editorially recommended the defeat of a police judge who was, in its opinion, performing in a manner inimical to justice in that town. The paper wrote a comprehensive and severe criticism of the judge, and ventured the opinion that all responsible members of the bench and bar agreed with its view. The judge was defeated at the polls. He then sued the paper for \$50,000 libel.

Although the newspaper insisted it had gone no further than fair comment and criticism, and pleaded privilege under the laws of that state, it was forced to trial, and to prove the truth of its allegations. Twenty-two lawyers of that little town came to the paper's defense—concurring in its appraisal of the plaintiff as an officer of the court, and exposing themselves to the humiliating attack of the plaintiff's counsel. Not one lawyer supported that judge; although being a pioneer of the community and a veteran in the profession—he was not without personal friends among the bar. The newspaper won its case after two trials. And the police court in that city is now presided over by a younger member of the bar who is making a proud record in the improvement of procedures.

In one of his interesting papers Mr. Economos has pointed out that of 12,900,000 traffic cases filed in 729 cities of 10,000 population and more, 9,700,000 were "processed" by traffic violations bureaus; only 3,213,000 went to court. And, he says, courts are able to exercise a deterring influence upon only about one-third of the maximum number of persons that should be charged with traffic violations. It is his opinion, and I think it makes sense, that "any moving violation may be considered hazardous and should be subject to court action."

It doesn't work out that way, as you know. But considering the competence and integrity of some of our lesser courts—answer for yourself whether justice thus by-passed is worse or better than justice in blindfold.

It has been truly said that the traffic court, the police court, the justice of peace court are at the heart of the traffic problem in this country. For it is in these lower courts that one finds a great opportunity for educating the American driver. It is essential that these courts be properly operated if we are to have good citizenship.

Good citizenship is not a passive thing; it demands action. And in furthering traffic safety, it requires more than a resolution in the bar association, a service club contribution for school boy patrol uniforms or a single vote for improvement bonds at election time. It demands letters to the editor, attendance at council meetings, visits with public officials, and political action committees that respect both politics and action.

It has been said that if manufacturers could engineer maximum safety into vehicles, it might cut the accident rate 5 to 10 per cent; if we would spend the billions necessary to engineer safer highways, we could lop another 5 to 10 per cent off the horrible rate of crashes. But 80 to 90 per cent of the accidents can be eliminated only by education and adequate enforcement.

Now adequate enforcement demands money. Money requires taxes. Everybody is complaining about taxes, and for good reason. But the people can't have their canapes and eat them, too. And it is a poor place to start economizing—at precisely the point

where one exposes himself and his family to the murderous threat of 55 million improperly regulated automobiles and trucks.

To a great extent the problem of traffic laws and traffic courts has been talked thin. When we are confronted by the inertia of legislatures in the matters of enforcement appropriations, improved highways, more uniform licensing and inspection, the recodification of laws and judicial reform—well, we quit or retreat. You know how excited you can become as a member of a local committee advocating court reform, and how quickly you become discouraged when checkmated in the confusion of the legislature by the smoothly oiled lobby in opposition. So we return to talking about the matter; and the toll of dead and maimed mounts by the year.

My plea is for organized, thoughtful and sustained action by members of the American Bar. Enough is to be done, in horizontal projects proceeding from the general dilemma called traffic, to justify the concentrated action of good citizens and dedicated lawyers for years ahead. It would seem past due that state bar associations take the leadership in reorganizing the justice of peace system—today's anachronism No. 1 in American Jurisprudence. Let the lawyers in the small towns of America direct prompt and professional scrutiny toward the quality of justice in our lesser courts.

We cannot afford to have millions of Americans run through shabby, undignified, incompetent courts on traffic violations. This country cannot expose millions of her citizens to tobacco juice justice or to pettifogging ignorance of dime store tyrants who operate from the authority of the American bench and still preserve any respect for law, order and due process.

The lawyers of America know that better than anyone else. May they, then, dedicate themselves anew to constructive action in behalf of better justice; let them look beyond the vistas of their own practice—and back, perhaps, to the justice, police and traffic courts. Let them realize that often, in an atmosphere of stale whiskey, flophouse palor and the wretchedness of improvidence and despair—American justice undergoes its most severe trial; that not in the pristine coolness and hush of the United States Supreme Court but in the crude and smelly interior of a courthouse basement are constitutional rights at greater and more frequent issue.

The reward for such public service by the lawyers of this country can be predicated in terms not only of better justice; but in the saving of human life, the conservation of dearly bought and coveted treasure and a greater measure of safety for modern human beings who are being driven ever closer to the prospect of violent death in a violent age.

* * * * *

There can be no question as to the readiness of newspapers and other media to serve as the good right arm of any movement by or for our traffic courts to improve safety and law obedience.

If traffic courts are not attended regularly and constantly by assigned reporters, it is because the courts have become little more than processing chambers. A quick look at the record after a day's business contains about as much information as a reporter needs to tell what happened, for all the juridical wisdom and pondered decisions that have marked that day's proceedings.

But it could be vastly different.

The traffic courts could make it different.

Not infrequently, in handing down a decision, a perspicuous judge in one of our higher courts will make a pronouncement which far transcends in importance the immediate case and the decision itself.

Let such a judge declare a wayward child's plight to be the fault of irresponsible parents, and he cites a lesson which will be read by untold sympathetic persons. Let such a judge call the truth on an evil of society which led a man or woman to downfall, and the same is true.

Yet I can remember no case in which the judge of a traffic court has offered such nourishment to the thought of his community and the country although his opportunities to do so are almost boundless.

Is there a confusing or dangerous intersection in your town or city? There are several in mine, where accidents occur with regularity and where traffic tickets are given frequently.

Suppose the judge of the traffic court accompanied his fines or punishment for violations occurring at such an intersection with a withering criticism of the cause of confusion or danger? Surely those responsible for the condition are parties to the incident that leads to court, and the judge should say so publicly every time he has a chance.

Would that be news? I can tell you one newspaper where it would land on page 1, and it would probably stay on page 1 until something was done about it.

It would be impossible, physically as well as financially, to devote the time and cost of complete court trials to all of the hundreds of thousands of traffic cases. Yet I fear that administrators of the law have become so impressed by the great numbers of cases that they are consciously or unconsciously committed to treat their dockets as an assembly line rather than a series of individual cases in each of which one or more citizens are involved.

In the course of a year, a district court may handle several dozen cases of major importance. Each may involve one or several persons whose futures may be at stake in the decision, and each may decide the disposition of thousands of dollars in money.

Yet, when the weight of these cases in human experience and possessions is weighed against the same human interests involved in the thousands of traffic cases within the same community, the so-called lower courts loom in their true proportions.

One of the compelling challenges for the traffic courts lies in the fact that no other force in our society has yet come forth with

a successful program for making the highways and streets safe.

Goodness knows that newspapers, radio, television, magazines, safety councils, automobile associations, and others have tried hard to find the effective means of stopping the death, mayhem and financial calamity that goes on about us every minute of the day and night.

Of course, we don't know how much more devastating the carnage and destruction might be if all these forces had not been active for years. Surely they have done a great deal of good.

But so have the highway engineers, and so have the law enforcement bodies, and so have the automobile manufacturers, the makers of tires, and all the rest of the people who have a humanitarian or direct business interest in making driving safer.

The fact remains that nothing we have done has been good enough to be successful.

There has grown up in our national consciousness an attitude of something akin to futility—worse, even acceptance—in facing the facts of the present highway toll.

We have all seen this evidenced. Let twenty or so persons, from infancy to adulthood, be stricken with an epidemic like polio, and die within the space of a month, and a whole city will be aroused. There will be general alarm, and health authorities will begin working frantically to stop the disease.

But let these same people die in automobile accidents in the same period, and we treat it almost as routine—a few headlines, true; but the impact is neither as great nor as long lasting.

There's something about that stream of cars and trucks forever buzzing past us that seems to mesmerize us all, whether we are one of those at the wheel, or just watching the flow. I can cite a personal experience.

Only a couple of weeks ago, I was crossing an intersection in my car when a truck ahead of me suddenly turned right, a long iron pipe extending aft from it a number of feet. The truck, in addition to the unsignalled turn, then stopped suddenly. The pipe crashed through the right side of my windshield, shattering it. It didn't go clear through, thanks to my own brakes and to shatterproof glass.

Now I won't say that death just grazed me; yet actually it could have been much closer than I am wont to believe.

It was just as close, for instance, as it would have been had a hundred-pound chunk of masonry been dropped from a five-story building as I passed on the sidewalk below, missing me by a scant three feet.

I drove on, told a few of my associates about the pipe and the windshield, and heard them make a few remarks about my being fortunate it wasn't worse.

But if I had faced peril in the form of falling masonry, though missing death as far as I did in the actual case, I know my associates would have talked about it for days. I would have considered it a miracle, and there probably would have been a city investigation as to why citizens' lives were endangered by falling stone.

I suppose the point is that people are just missing death and injury all the time in cars, but materials drop from buildings onto sidewalks only once in a very long while.

Or let's take a very dramatic example—that of the Korean war.

The war lasted from June 25, 1950, to July 27, 1953. By the best estimates now available, 25,604 American men lost their lives in that conflict to test whether Communism was to continue to ambush the free world unopposed.

In that same period of three years, one month and two days, 115,750 American men, women and children lost their lives in traffic accidents—trying to prove nothing, contributing nothing to their country's security. Because the slaughter goes on and on, they haven't even the immortal satisfaction given to many men—particularly soldiers—that their deaths gave us something to live by.

Those who died beside our highways and on our city streets, however, are just as dead and each one leaves just as big a gap in a family or community or in society at large, as those killed on battlefields.

But the minute one thinks of this contrast, he is confronted with this revealing realization: deaths in war are dramatic—they strike the imagination, the national heart. Deaths in automobiles are not, and all the efforts that have been made to bring the people to grasp the enormity of the thing have had pitifully little avail.

And, of course, one unassailable objective of a conference such as this is to do everything possible toward the acceptance of uniform traffic laws for the whole country.

It is not only absurd, but it is unthinkable that a signal recommended in most states for a left turn can mean a right turn in one or more other states. To make it the law to stay inside a line in one state, and require the driver to straddle it in another is dangerous almost to the point of being criminally so.

One valuable feature of a driver's licensing system is that it enables the state to exercise some control over drunken and reckless motorists. Provision is made in the traffic code now for suspension or revocation. Any motorist caught driving after his license has been taken away from him automatically should be subject to imprisonment. Jail sentence in such cases should be mandatory.

Since the coming of the automobile more American lives have been sacrificed in motor accidents than in all the wars in which our nation has engaged. In December of 1951 the millionth motor death occurred. Wars, fortunately, are intermittent. But death on the highway is continuous. This deplorable truth demonstrates that effective control of traffic has not been attained despite our expensive attempts to enforce the jungle of laws written to establish mastery over the individualistic American motorist.

Despite the serious efforts over the years to promote uniform traffic legislation we must admit that there is much to be desired in stating the rules which govern use of the road by motor vehicles. Traffic legislation throughout the nation should not only be uniform, but as simple and sensible as possible.

The nearly 70 million motorists driving the 55 million vehicles in the 48 states and District of Columbia will not bother to learn or comply with conflicting and complicated laws in different states and cities. Nor can they reasonably be expected to do so.

This has long been recognized by many organizations and governmental bodies. Since 1926 a uniform vehicle code has been in existence. It consists of five separate acts: the uniform motor vehicle administration, registration, certificate of title and anti-theft act, enacted in considerable part in 17 jurisdictions; the uniform motor vehicle operators' and chauffeurs' act, substantially adopted in 28 states, although every state except South Dakota has a drivers' license law; the uniform motor vehicle safety responsibility act, enacted in principle in 40 jurisdictions; and the uniform act regulating traffic on highways, containing the rules of the road and therefore the most important statute of all in providing safety, approved substantially in only 28 states. This is a disconcerting and discouraging record. It is to the shame of the states that Michigan alone has codified its motor vehicle laws with the uniform vehicle code as a model.

Think what it would mean to the cause of traffic law enforcement in every state to be able to eliminate the irrelevant but perfectly human plea: "I'm sorry, but I didn't know the law. It's different in my state." Think of the stimulating effect to traffic education if we could assure everyone that the traffic laws, except for minor variations brought on by local conditions, were the same everywhere. Surely the public has the right to expect rules of the road and hand signals that are uniform in every state and speed limits that are rational in the light of present day conditions. Only when we have achieved uniformity in our basic traffic legislation may we hope for uniformity in interpretation, in administration, and in enforcement on which both respect for law and effective enforcement depend. It is as simple as that.

When we turn from state statutes to look at municipal ordinances, we enter a jungle of local law. These ordinances date from various periods, reflect varying concepts of traffic law enforcement, and, like most ordinances, are quite unknown to all save expert. The model traffic ordinance, first prepared in 1928 and since revised several times, is available as a guide to the diligent. (Colorado, fortunately, has taken a definite step forward in respect to this ordinance.) By statute any municipality may adopt the model traffic ordinance simply by referring to the statute in any ordinance, and many municipalities have done so.

By and large, it is still a jungle of law, a no-man's land of complexities.

As long as we have ordinances such as we do, nobody can possibly assert that he knows all the law. If practicing lawyers do not know the ordinances of their home towns, how can we expect the motorist, who glides through a score of—or a hundred—municipalities in a single trip, to know them?

And now finally, may I point out that we must improve traffic courts. You as lawyers and members of the A.B.A. are committed to that course. We must improve automobiles so that to make them more nearly safety perfect. And, of course, we must improve highways and build into them all modern safety devices. But as you know and as I know, we could do all this and still we will have only solved a small part of the problem we face. We must increase the individual responsibility of the citizen and the motorist through education in our schools, our colleges and our newspapers, radios and television. Even education doesn't do the job unless it leads to the development of individual responsibility. This is the kind of thing to which we must dedicate ourselves and our associations.

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TRAFFIC ACCIDENT INVESTIGATOR'S MANUAL, a 285-page, 15-chapter textbook, published by the Traffic Institute, Northwestern University, 1704 Judson Ave., Evanston, Ill. \$3.50. Covers the basic problems confronted by the traffic accident investigator at the operational level. Contains more than 100 photographs, charts, tables, and diagrams.

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